**MESSAGE FROM THE DESIGNATED FAMILY JUDGE FOR WILTSHIRE**

**LISTING PRACTICE IN FAMILY CASES IN WILTSHIRE**

**DURING THE COVID-19 CRISIS**

1. For the immediate and foreseeable future we have to cope with an unprecedented collection of adverse circumstances: -
2. It appears that the magistracy are unlikely to be available to take cases for the foreseeable future because it is very difficult for them to conduct cases remotely. Legal Advisers can do some lists, but their powers are limited. We are awaiting a wider Circuit wide review of this situation to see whether there is a way of retaining Magistrates in the system in the current circumstances.
3. The use of Recorders and DDJs is, as yet, unclear; but it may be that some will be able to conduct remote cases.
4. It is becoming clear that there are additional applications arriving as a result of Covid-19 contact refusals and FLA 1996 applications arising out of family lock down scenarios.
5. Cases dealt with remotely seem to take greater time because of the set up arrangements, IT crashes/glitches and greater difficulty in reaching compromise because of communication impediments.
6. There is a danger of our lists becoming so clogged up that urgent cases will not be dealt with in anything like timely manner. In order to ensure that urgent cases do get dealt with, it has become necessary to take the step of prioritising work by triaging all new applications and, in some cases, of reviewing the urgency of cases already listed.
7. For all new applications this exercise will be conducted by liaison between a Legal Adviser and a District Judge, with the decision being made by the District Judge as a judicial decision. As a judicial decision it will be subject to an application for set aside: see FPR 2010 Rule 4.3(5). This step should be the first port of call for any litigants unhappy with the court’s decision, but these decisions will be subject to the right to seek permission to appeal to a Circuit Judge, likely in most instances to be myself as Designated Family Judge. All decisions of this nature will be made under the overall aegis of FPR 2010 Rule 1, the overriding objective. In this time of national crisis, the construction of the expression “*allotting to it an appropriate share of the court’s resources, whilst taking into account the need to allot resources to other cases*” will need to take into account the severe difficulties created by the factors in paragraph 1 above. In cases where it appears that a first listing of the application **can reasonably be expected to await the return of normal listing circumstances in the court** an order will be drawn up along the following lines:-

*“The current Covid-19 crisis has created very large pressures on listing in the courts in Wiltshire, as elsewhere. Your case has been considered by a district judge who has decided that, taking into account the overriding objective in FPR 2010 Rule 1, the first listing of this application can reasonably be expected to await the return of normal listing circumstances. Listing issues will be considered again, together with any written representations you wish to send to the court, by a district judge in the week commencing 15th June 2020. It is open to you to make an application to set aside this decision (see FPR 2010 Rule 4.3(5)) and this step should be the first step of anybody wishing to challenge such a decision. An alternative is to seek permission to appeal against this case management decision within 7 days of being notified of this decision (see FPR 2010 Rule 30.4(3)).”*

1. Judges may decide to take similar steps in relation to cases already in the list, directing that cases are taken out of the list on the same basis, i.e. that listing will be reconsidered in the week commencing 15th June 2020.
2. The selection of mid-June as a target date is intended to be a reasonable estimate of the beginning of the return of normal listing circumstances. If, as June approaches, it looks as though normal listing circumstances are not imminently returning, then cases may have to be put back to be reconsidered at a date later than the week commencing 15th June 2020. If, to the contrary, matters advance more quickly than expected then the selected date could be brought forward.
3. This measure applies to all applications in family proceedings, but note:-
4. The guidance given in the HMCTS document “Summary of Family business priorities previously agreed with the President of the Family Division: April 2020”.
5. It is unlikely to be appropriate to use in most public law children proceedings, but may be appropriate in some cases, for example where the application relates to longer term issues.
6. In private law children proceedings, the deferral of listing a first hearing (or FHDRA) will not prevent the commissioning of a safeguarding letter from CAFCASS.
7. In money cases, the deferral of listing a first hearing (or First Appointment) will not prevent the parties using the accelerated First Appointment procedure referred to in the FRC Good Practice Protocol and Mostyn J’s Covid-19 guidance. Legal Advisers will not be involved in decisions made in money cases.
8. For the time being all cases which do receive a listing, with very limited exceptions, will be listed as remote hearings and an order will be drawn up which contains a direction along the following lines:-

***“UPON*** *the Court determining that in the exceptional circumstances of the current national public health emergency this case is suitable for hearing remotely (‘remote hearing’) by means of [BT telephone conference call][Skype for Business][other]*

***BY ITS OWN MOTION***

***IT IS ORDERED THAT:***

*1. All hearings in this matter shall take place by way of remote hearing pursuant to FPR 2010 r 4.1(e) unless the court directs otherwise.*

*2. The parties and their representatives shall attend all hearings by way of [telephone][Skype for Business][other].*

*3. No unauthorised person may be present at this hearing, ie in the room where the hearing is taking place, including any children under the age of 18 and children subject to the proceedings. When asked, each legal representative must be able to confirm that no unauthorised person is in attendance or able to listen to the hearing.*

*4. This matter shall be listed for a remote hearing on*

*5. If both parties are represented, or if one party is represented and it is possible, the parties shall arrange and attend remotely an Advocates Meeting no less than 48 hours before the hearing listed above.*

*6. The Court will provide details of how the BT telephone conference][Skype for Business][other] hearing may be accessed in due course, and no less than 24 hours prior to the hearing. If you are unrepresented, you may be asked by the court staff to provide them with a telephone number or email addressthat can be used for the hearing.*

*8. If the applicant is represented, or if not, if the respondent only is represented, they shall by 1600 hrs on the day before the hearing electronically file a PDF bundle, which must include:*

*(a) A case summary and chronology;*

*(b) The parties positions statements;*

*(c) The previous orders that are relevant to the remote hearing;*

*(d) All essential documents that the court requires to determine the issues that fall for determination at the remote hearing;*

*(e) A draft order;*

*9. If neither party is represented, they must not send additional documents to the court unless they have been ordered to do so. They will not be required to file the documents set out in paragraph 8, but are required to have complied with any court orders that ordered them to file documents in readiness for a hearing.”*

1. I take no pleasure in advancing these measures, but the extraordinary times in which we are currently living render this to be necessary.

HHJ Edward Hess

Designated Family Judge for Wiltshire

6th April 2020